IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.K.DENESAN

FRIDAY, THE 2ND MARCH 2007 / 11TH PHALGUNA 1928

WP(C).No. 4688 of 2007(G)

PETITIONER:

P.RADHAKRISHNAN, U.D.CLERK (UNDER SUSPENSION), SHOLAYOOR GRAMA PANCHAYAT, MATTATHUKAD P.O., PALAKKAD DISTRICT.

BY ADV. SRI.P.K.SURESH KUMAR
SMT.PRIYA VIJAYAN

RESPONDENTS:

1. **THE DIRECTOR OF PANCHAYATS, THIRUVANANTHAPURAM.**
2. **THE DEPUTY DIRECTOR OF PANCHAYAT, PALAKKAD.**
3. **SHOLAYOOR GRAMA PANCHAYAT, REPRESENTED BY ITS SECRETARY, MATTATHUKAD P.O., PALAKKAD DISTRICT.**
4. **THE PRESIDENT, SHOLAYOOR GRAMA PANCHAYAT, MATTATHUKAD P.O., PALAKKAD DISTRICT.**

R! & 2 BY GOVT. PLEADER SHRI.P.NANDAKUMAR.

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 02/03/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

WP(C).No.4688 of 2007.

Petitioner's Exhibits:-

P1: Copy of the Order No.A. 626/06 dated 31-10-2006 issued by there 4th respondent.

P2: Copy of letter dtd.5-1-2007 issued by the 3rd respondent to the petitioner.

Respondents' Exhibits:- Nil.

-// true copy //-

P.A. To Judge.

kvs/-

K.K.DENESAN, J.

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WP(C).No.4688 OF 2007-G.
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Dated this the 2nd day of March, 2007.

J U D G M E N T

The petitioner is an an Upper Division Clerk. The appointing authority is the Director of Panchayats the 1st respondent. At present, he is working in Sholayoor Grama Panchayat. As on the date of Ext.P1 order ie, 31-10-2006, the 4th respondent passed Ext.P1 placing the petitioner under suspension, with immediate effect. The allegations based on which Ext.P1 order was passed are briefly stated in Ext.P1. The petitioner approached the 4th respondent requesting to reinstate him in service. But that request was declined as per Ext.P2. Aggrieved by Ext.P1 order, rather the continuance of the order of suspension, this writ petition has been filed challenging Ext.P1 order. A direction commanding the respondents to forthwith reinstate the petitioner in service is also prayed for.

2. The petitioner took out urgent notice to the respondents by special messenger, particularly respondents 2 to 4. It is seen that notice was served on respondents 2 to 4. Though the 4th respondent entered appearance through counsel and sought for time to file counter-affidavit, nothing further has been done thereafter on behalf of the 4th respondent. The matter came up for consideration on four occasions and the 4th respondent or for that matter any of the respondents has not cared to file counter-affidavit. Counsel for the petitioner submits that there is absolutely no justification to keep the petitioner under suspension.

3. With reference to Sub rule (6) of Rule 8 of the Kerala Panchayat Raj (Control Over Officers) Rules, 1997, counsel submits that the President has got the duty to complete the enquiry against the petitioner within three months of the issue of Ext.P1 order and to submit the enquiry report for the consideration of the Panchayat. It is submitted that no enquiry has been conducted and no report as

contemplated in Sub rule (6) of Rule 8 has been presented by the President for the consideration of the Panchayat. Ext.P1 order was passed on 31-10-2006. Now four months are over. The same situation continues even now. The 4th respondent has not offered any explanation why the enquiry has not been conducted and as to why the enquiry report has not been presented. If the 4th respondent could not file his counter-affidavit so far, at least oral submission could have been made before this Court as to why the enquiry has not been conducted and as to why there is no compliance of Sub rule (6) of Rule 8 of the Kerala Panchayat Raj (Control Over Officers) Rules, 1997.

4. In the above circumstances, I am inclined to place reliance on the averments made by the petitioner in this writ petition. Counsel for the petitioner submits that Ext.P1 order has been passed in a casual manner and that the only intention is to keep the the petitioner out of service. The petitioner was prepared to face the ordeal of the

enquiry had it been done promptly and as required by law. Counsel further submits that Rule 10 prescribes the necessity to advert to the question of offences which may result in the imposition of a major punishment while issuing orders of suspension. Since no enquiry report has been drawn and presented before the Panchayat, the provisions of Sub rule (6) of Rule 8 and Rule 10 of the aforesaid Rules which have been framed to safeguard the interest of the Panchayat as well as that of the officer against whom disciplinary proceedings are taken, stand violated. It is averred in the writ petition that it is the personal animosity nursed by the Secretary of the Panchayat against the petitioner that has resulted in Ext.P1 order. In the normal course, such a serious allegation made in the writ petition, calls for an affidavit of the respondents controverting the allegations if they are not true. Since no counter-affidavit has been filed, I am inclined to believe that what the petitioner has stated is true. I am, therefore, of the view that the violation of the

rules coupled with the averments contained in the writ petition which stand proved as above, will entitle the petitioner to get favourable orders from this Court.

5. In the result, Ex.P1 order is set aside. There shall be an order directing the competent among the respondents to reinstate the petitioner in service within ten days from the date of receipt of a copy of this judgment.

The writ petition is allowed as above.

K.K.DENESAN, JUDGE.

kvs/-